IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.243 OF 2001
ALONG WITH
CIVIL APPLICATION NO.1361 OF 2004

1. Pathya Pustak Mandal Seva
Nivruti Karmachari Sangh
having its Office at 18/27,
Panchalpuri, Near Natraj Gas,
Dahanukar Colony, Kothrud,
Pune - 411 029.

2. Shri Sampatrao Sakrojirao
Shinde, residing at : - 62/489
Laxminagar, Parvati, Pune 411 009.

3. Shri Swaminath Singh
8/217, Mhada Housing Board,
Gokhale Nagar,
Pune 411 016. ....Petitioners.

v/s

Maharashtra State Bureau of Text
Book Production and the
Curriculum Research,
Balbharti, Senapati Bapat Road,
Pune 411 004. ....Respondents.

Shri A.V. Anturkar, Advocate for the petitioenrs.

Shri C.J. Sawant, Sr. Advocate with Shri R.S. Page,
Advocate for respondent.

CORAM: V.G. PALSHIKAR &
V.M. KANADE, JJ.

DATE: 6TH JULY, 2004

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Petitioners are seeking writ of mandamus or writ in the nature of mandamus or appropriate writ, order or direction under Article 226 of the Constitution of

India directing the respondents to forthwith release pension to all the members of the Petitioners' Association who have retired from the service of the respondent No.1 - Maharashtra State Bureau of Text Book Production and the Curriculum Research (For short "Bureau") as per the provisions of Regulation No.83 along with the provisions of Maharashtra Civil Service [Pension] Rules, 1982.

2. Petition was initially filed on behalf of Pathya Pustak Mandal Seva Nivruti Karmachari Sangh and Petitioner Nos. 2 and 3, both of whom were working with the Bureau. The name of petitioner No.1, however, was subsequently deleted on the prayer being made by the learned Counsel appearing on behalf of the petitioners and the said prayer was granted by order dated 25/10/2001. Petition, therefore, was pursued by petitioner Nos. 2 and 3 who are ex-employees of the Bureau. Petitioner No.2 retired on having reached the age of superannuation on 31/7/1989 and Petitioner No.3 retired on having reached the age of superannuation on 31/1/1992. The case of the petitioner is that the Bureau was established by the Government of Maharasthra on 27/1/1967 on a decision being taken by the Government by Cabinet Resolution and it was registered as an autonomous body under the Societies

Registration Act, 1860 and the Bombay Public Trust Act, 1950. It is an admitted position that the main object of the Society was to print text books for the Primary Schools for the benefit of pupils and the teachers. It was expected that the Bureau would print these books which would be of superlative quality and the respondent - Bureau was given the task of printing, publishing, distributing and selling the text books which were approved by the Government or other appropriate authority. Respondent - Bureau was also to ensure that the books were available at a fair and reasonable price. The Government approved the draft Memorandum of Association and Rules and Regulations of the Bureau by passing a Resolution No.TBK.1066-G.

3. It was alleged by the petitioners that the petition was being filed by them in a representative capacity on behalf of all the persons who were retired from the respondent - Bureau. The grievance of the petitioners was that they were not paid pension though they were entitled to receive pension by virtue of Regulation No.83 of the said Regulations. According to the petitioners, the said Regulation No.83 incorporated all the provisions prescribed by the Bombay Civil Service Rules and, as such, the

provisions of the Maharashtra Civil Service [Pension] Rules, 1982 were also specifically incorporated in the Regulation. The case of the petitioners is that though the representation was made by them from time to time and the Resolution had been passed by the Government on 13/5/1988 which, in principle, had agreed that the Pension Scheme should be made applicable, no effect was given to the said Resolution. Further, it was submitted that though one more Resolution was passed in the meeting dated 30/10/1999 by the Executive Committee, no further steps were taken for preparing the new scheme on the basis of the Government Pension Scheme, 1982. It was further submitted that the Board of Governors in their meeting held on 29/6/2000 was to consider whether the detailed Pension Scheme which was framed in accordance with the Maharashtra Civil Service [Pension] Rules, 1982 should be accepted or not. However, the said particular item on the agenda was deferred and postponed and no decision was taken. Petitioners, therefore, have filed this Writ Petition under Article 226 of the Constitution of India.

4. It was submitted by the learned Counsel appearing on behalf of the petitioners that the respondent - Bureau was a State within the meaning of Article 12 of

the Constitution of India and was amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. The learned Counsel has relied on the Judgment of the Supreme Court in the case of **Sheela Barse vs Secretary, Childrens Aid Society and Others,** reported in **(1987) 3 SCC 50** and the judgment in the case of **All India Sainik Schools Employees' Association vs. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and others** reported in **1989 Supp. (1) SCC 205.** He also relied on the judgment of this Court in the case of **K.C.Kaushik vs. P.B. Rane, Vth Income Tax Officer and others**, reported in **1990 Mh.L.J. 479.** He also relied on the judgment of this Court in the case of **Costa and Co. Pvt. Ltd., Goa vs. Sales Tax Officer, Margao**, reported in **2001(2) Mh.L.J. 103.** He relied on the said judgments in support of his first submission that the respondent - Bureau was a State within the meaning of Article 12 of the Constitution of India and in support of his second submission that even if alternative remedy was available, once the petition is admitted and had remained dormant for a period of time, it would not be fair to direct the party to go to the appropriate authority.

5. The learned Counsel appearing on behalf of the petitioners, thereafter, submitted that in view of Regulation No.83, the provisions of the Bombay Civil Service [Pension] Rules were incorporated in the Regulations and as such Regulations had accepted that the pension was payable to the employees of the respondent - Bureau. He submitted that the provisions under the Bombay Civil Service [Pension] Rules were applicable Mutatis Mutandis to the Bureau. He relied on the judgment of the Apex Court in the case of **Janba (Dead) Through LRs. Vs. Gopikabai (Smt)** reported in **(2000) 4 SCC 1** and the judgment of the Apex Court in the case of **Mariyappa and others vs. State of Karnataka and others** reported in **(1998) 3 SCC 276**. He relied on these two judgments in order to demonstrate as to how the term "Mutatis Mutandis" was considered by the Apex Court in the said two cases.

6. The learned Counsel appearing on behalf of the respondent submitted that the petitioner Nos. 2 and 3 had retired in 1989 and 1992 respectively and that the petition was filed in 2000. He submitted that there was a delay in filing the present petition and, on that ground alone, the petition was liable to be dismissed. He further submitted that petitioner No.1

was deleted on prayer being made by the counsel for the petitioner and the petitioner Nos. 2 and 3 had no locus to file the Petition on behalf of the members of Petitioner No.1 and, therefore, on that ground it was urged that the Petition should be dismissed. The learned Counsel appearing for the respondents further submitted that the respondent - Bureau was not a State within the meaning of Article 12 of the Constitution of India and it was a Society registered under the Societies Registration Act and, as such, was not amenable to the writ jurisdiction of this Court.

7. The learned Counsel for the respondent further submitted that the services of the petitioners with the respondent - Bureau were governed by the Staff Regulations. He submitted that Rule 81 of the Staff Regulation clearly stated that the provisions of the Employees' Provident Funds Act, 1952 and the Scheme framed thereunder shall be applicable to the employees of the Bureau with effect from 1/4/1969. He submitted that the Employees Pension Scheme has been framed on 16/11/1995 under the Employees' Provident Funds Act, 1952 and it was made applicable to the employees of the Bureau. It was submitted that, however, since the petitioners had retired prior to the implementation of the Employees Pension Scheme under the Employees'

Provident Funds Act, 1952, they were not entitled to the benefits under the said Scheme. It was further submitted that the provisions of the Maharashtra Civil Service [Pension] Rules 1982 had not been made applicable by the Bureau to its employees and, therefore, petitioners were not entitled for the reliefs claimed by them in the Petition. It was further submitted that the Regulation No.83 did not entitle the petitioners to pension or any benefits under the Pension Scheme. It was submitted that the Regulation Nos. 81, 82, 83 and 84 were pertaining to section 17 in relation to Provident Fund and the applicability of the provisions of Employees' Provident Funds Act, 1952 and the Scheme framed thereunder. It was submitted that no specific or general Rule or Regulation had been framed in relation to the Pension Scheme or was adopted by the Bureau at any time. It was submitted that Regulation No.83 did not contain or include the Maharashtra Civil Service [Pension] Rules 1982 and it was not mentioned that they would apply Mutatis Mutandis to the Petitioners. It was further submitted that the petitioners had received all benefits of Gratuity, Provident Fund and had retired long ago and were not entitled to receive pension. The learned Counsel relied on the Division Bench Judgment of this Court in the case of **Children's**

Aid Society Employees Union and another Vs. Children's Aid Society and others reported in **2003(2) Mh.L.J. 95**.

8. We have heard the learned Counsel appearing on behalf of the petitioners and the learned Counsel appearing on behalf of the respondent at length. We have given our anxious consideration to the submissions made by the learned Counsel appearing on behalf of both the parties.

9. Petition was admitted on 25/10/2001 and pending in this Court for more than three years. The Apex Court in catena of cases has observed that once the Petition is admitted, ordinarily, it should be decided on merits and at the stage of final hearing petitioner should not be made to approach the alternative forum where alternative remedies are available. In the light of the observations made by the Apex Court in catena of Judgments, we propose to decide the issue in question on merits.

10. It is not possible to accept the submission made by the learned Counsel appearing on behalf of the petitioners regarding the applicability of the Maharashtra Civil Service [Pension] Rules, 1982 to the

Bureau. It is an admitted position that the respondent - Bureau is a Society registered under the Societies Registration Act and under the Bombay Public Trust Act. Service conditions of the employees of the Bureau are governed by the Staff Regulations. Section 17 pertains to Provident Fund. Regulation No.83 on which reliance is placed by the petitioners is, in fact, a Regulation forming part of Section 17. For the purpose of ready reference Section 17 and Regulation Nos. 81, 82, 83 and 84 are reproduced hereinbelow.

"Section XVII : Provident Fund

81. The provisions of the Employee's Provident Fund Act 1952 and the scheme framed thereunder as may be amended from time to time, shall be applicable to the employees of the Bureau with effect from 1.4.1969.

82. The Bombay Civil Services, Conduct, Discipline and Appeal Rules and the classification, control and Appeal Rules framed by the Government of Maharashtra, and in force for the time being, to the

extent they are not repugnant to or inconsistent with the Staff Regulations framed by the Bureau as amended from time to time, shall apply to all the employees of the Bureau mutatis mutandis as if the said Rules framed by the Government were incorporated in the staff Regulations of the Bureau.

83. All the Bombay Civil Services Rules prescribed by the Government of Maharashtra governing non-industrial employees of the Government of Maharashtra which are not contrary to or inconsistent with these Staff Regulations of the Bureau, including any additions, amendments or alterations thereto that may be made from time to time, shall also govern the employees of the Bureau and shall always be deemed to apply to them, as if such Bombay Civil Services Rules are incorporated Mutatis Mutandis in these staff Regulations.

84. For the enforcement of a right or claim by or against the Bureau arising

out of these Staff Regulations or otherwise howsoever, a competent Court in Pune will alone have jurisdiction and no other Court."

From the perusal of the provisions of section 17, it is apparent that these Regulations pertain to the Provident Fund which is payable to the State employees. Regulation No.81 specifically lays down that the provisions of Employees Provident Fund Act, 1952 and the Scheme framed thereunder would be applicable to the employees of the Bureau with effect from 1/4/1969. Thus, Regulation 83 cannot be read in isolation but has to be read in the context of Section 17 which pertains to the Provident Fund. Thus, the submission of the learned Counsel appearing on behalf of the petitioners that in view of Regulation No. 83, provisions of the Maharashtra Civil Service [Pension] Rules are made applicable, cannot be accepted.

11. Moreover, Regulation No.83 in terms does not make any reference to the Maharashtra Civil Service [Pension] Rules, 1982 and the Regulation No.83 will have to be read in the context of Regulation No.81 which specifically makes the Employees' Provident Fund Act, 1952 applicable to the employees of Bureau.

12. It is an admitted position that the petitioner Nos. 2 and 3 are retired on 31/7/1989 and on 31/1/1992 respectively. It is further admitted that the Pension Scheme was made applicable to the employees of the Bureau in 1995. The Scheme, therefore, would be available only to the employees who have retired after 16/11/1995. Petitioners, though they were aware of this position, have tried to seek writ from this Court by relying on Regulation No.83 which even otherwise does not relate to any Pension Scheme but relates to the Provident Fund which is payable to the employees of the Bureau. In the Petition itself, the petitioners have admitted that no steps were taken after the Resolution was passed on 13/5/1988 wherein, in principle, it was agreed that the Pension Scheme should be made applicable on the basis of the Pension Scheme which was being introduced in the Secondary School Education Board. The averments in the Petition itself clearly shows that the petitioners were aware that the Pension Scheme was not made applicable to them. The reliance placed, therefore, by the petitioners on the Regulation No.83 of the Staff Regulations is, therefore, clearly unfounded and the said submission cannot be accepted.

13. In the result, there is no merit in the submissions made by the learned Counsel appearing on behalf of the petitioners. Petition is therefore dismissed. Rule is discharged with no order as to costs. Civil Appplication No.1361 of 2001 is also accordingly disposed of.

V.G.PALSHIKAR,J.

V.M. KANADE, J.